

Appl. No. 10/696,671  
Reply to Office Action of December 12, 2006

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### REMARKS/ARGUMENTS

Applicant wishes to thank the Examiner for taking the time for a discussion regarding the subject case the afternoon of January 23, 2007, in which the Examiner indicated that applicant may amend the scope of the claims in the case to specify transgenic avians provided that support for such an amendment is cited by the applicant.

Claims 20, 21, 28 to 35, 37, 41, 42, 46, 52 to 56, 59 to 61 are pending in the application. Claims 20, 21, 28 to 35, 37 41, 42, 46, 52 to 56 have been amended, claims 57 and 58 have been canceled and claims 59 to 61 have been added. Differences between the new claims and previously pending claims should not be viewed as acquiescence to any of the Examiner's rejections. This amendment includes no new matter.

Support for amending the claims to a germ-line transgenic avian which lays an egg containing an exogenous protein encoded by a transgene present in the germ-line of the transgenic avian wherein the exogenous protein is produced in the transgenic avian oviduct, is provided throughout the specification, for example, at page 7, lines 4 to 6 where it is stated that "there exists a need to create germ-line modified transgeneic birds which express exogenous genes in their oviducts and secrete the expressed exogenous proteins into their eggs" and page 33, lines 12 to 13 where it made clear that the exogenous protein, in this case  $\beta$ -lactamase, is present in the eggs laid by the transgenic avian. New claims 59 to 61 are supported by the specification, for example, at page 30, line 30 where proteins that must be purified for use (i.e., proteins used as human and animal pharmaceuticals) are disclosed for production in accordance with the invention.

The Examiner rejects claims 57 and 58 under 35 USC 112, first paragraph as failing to comply with the written description requirement. Applicant traverses the rejection; however, claims 57 and 58 have been canceled in order to facilitate prosecution of the case.

The Examiner rejects claims 20, 21, 28 to 35, 41, 42, 46 and 52 to 58 under 35 USC 102(b) as being anticipated by Bosselman. Applicant traverses the rejection.

The Examiner states that Bosselman teaches the making of transgenic chickens and eggs containing a desired protein product and after summarizing statements made in the Declaration of Dr. Gibbins the Examiner states that the cited prior art of record clearly teaches that the chicken eggs manipulated via micro-injection are considered intact as they mature into live chickens. The Examiner continues by saying that regarding the presence of exogenous protein in

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the egg or egg white, the cited art teaches that 5-20ul volumes of tissue culture fluid containing the vector SW272/cGH were injected beneath and around the blastoderms of unincubated or briefly incubated chicken embryos and that the cited art teaches that the injected vector media is obtained by culturing C3 REV-A helper cell line in Eagle's minimal essential medium (MEM) containing 7% fetal calf serum (FCS). The Examiner further states that the fetal calf serum contains various cytokines, growth factors and antibodies etc; the micro-injection of Bosselman's vector media results in the introduction of exogenous cytokines growth factors and antibodies in the injected avian egg. The Examiner concludes that therefore the avian eggs as disclosed in the cited prior art of record is not patentably distinct from the avian egg as claimed herein.

Accordingly, the present claims as amended are not anticipated by the Bosselman reference since, as discussed in applicant's Response of October 25, 2006, the production of a germ-line transgenic avian which lays an egg containing an exogenous protein encoded by a transgene present in the germ-line of the transgenic avian wherein the exogenous protein is produced in the transgenic avian oviduct is not disclosed in Bosselman or the other cited art of record.

In conclusion, applicant has shown that pending claims 20, 21, 28 to 35, 37, 41, 42, 46, 52 to 56 and 59 to 61 meet the requirements for patentability under 35 USC 112, 35 USC 102 and 35 USC 103. Therefore, the presently pending claims are allowable and applicant respectfully requests the Examiner to pass the above-identified application to allowance.

If any issues remain to be addressed in this matter, which might be resolved by discussion, the Examiner is respectfully requested to call applicants' undersigned counsel at the number indicated below.

Respectfully submitted,



Kyle Yesland, 706-277-1170, ext 233  
Attorney for Applicants  
Reg. No. 45,526  
AviGenics, Inc.  
Legal Department  
111 Riverbend Road  
Athens, GA 30605